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*The Hon. John Toom, the
Secretary of State.*

DISCOURSE

IN THE

LIFE AND CHARACTER

OF THE

HON. GEORGE MATHEWS,

LATE PRESIDING JUDGE

OF THE SUPREME COURT OF THE STATE OF LOUISIANA.

BY THE HON. CHARLES WATTS,

AT THE REQUEST OF THE MEMBERS OF THE BAR OF NEW-ORLEANS

New-Orleans :

PRINTED BY BENJAMIN LEVY,
CHARTRES STREET.

1837.

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BRETHREN OF THE BAR,
AND FELLOW-CITIZENS OF LOUISIANA :

UPON the decease of any person of note, it was a custom among the ancient Egyptians, to institute an investigation into the life and character of the deceased, and to pass a sentence of censure or approbation, according as he merited it, in relation to his public and private life.

It may be considered as an emanation of this popular feeling, that at the present day, on the decease of any man who has deserved well of his fellow-citizens, they call for a review of his life and character.

As funeral rights to the body assuage the grief, and gratify the affections of the relations and friends of a private person, so the public expression of the sentiments of respect, and veneration for the character of a man whose departure from life is felt as a public loss, and an analysis of the traits and qualities which called forth public esteem, is a discharge of some portion of the debt of public gratitude, and is an incentive to the honorable ambition of those whose minds are so constituted as to find more happiness and satisfaction in serving their fellow-citizens, than in the attainment of objects of a private and personal nature.

To this source, I trace the resolution adopted at a meeting of the brethren in the profession of the late Judge Mathews, in pursuance whereof we are now assembled, and in compliance with which, I shall proceed to lay before you such reflections on his life and character as suggest themselves to me. A deep participation in the general sentiment is all the qualification I possess for the trust assigned me, and I must crave your indulgence, if the pressing nature of my daily avocations, has left me insufficient leisure to do justice to the honor conferred on me, and to a full and minute delineation of the character, conduct and life of a man so eminent, and who received so large a tribute of the public esteem and veneration.

The most natural introduction to what I have to say on the life and character of Judge Mathews, will be to lay before you such particulars of his parentage, early life and private fortunes as on inquiry I have been able to procure.

The subject of our discourse was born on the 21st September, 1774, a few miles below Staunton, in Augusta County, State of Virginia.

At the time of his birth, his father was absent on that memorable expedition which was terminated by the battle at the mouth of the Great Kenhawa, on the 10th October, of the same year. He was called George, (the name of his father) by his mother, who doubted the return of her husband.

From his birth until the age of ten years, all the education and instruction he received was from his mother, a lady distinguished for her excellent mind and other qualities—his father being absent the greatest portion of that time in the service of his country.

In the year 1785, the father of Judge Mathews removed to the State of Georgia with his family, and settled in what was then called Wilkes County, afterwards called Oglethorp, on Broad River, at a place known as the Goose Ponds, at that time on the frontiers of Georgia, where George Mathews remained until the year 1792, receiving only such instruction as frontier counties at that period afforded.

In the year 1792, in the eighteenth year of his age, he returned to Virginia, and in 1794 became a member of an academy known as Liberty Hall, in the town of Lexington, Rockbridge county, where,

during the years 1794-95, he finished his course of academical studies.

In 1796, being then twenty-two years of age, he returned to Georgia, and commenced the study of the law with his eldest brother, John Mathews, with whom he continued until the year 1798. In that year he went to the city of Augusta, and finished his law studies with George Walker, one of the most eminent lawyers in the State.*

In the year 1799, in his twenty-fifth year, he was admitted to the bar, and continued the practice of law from that time until the year 1805, when, without any solicitation on his part, he was appointed by Thomas Jefferson, Judge of the territory of Mississippi. From thence he was transferred to the territory of Orleans in 1806, and on the erection of Louisiana into a State in 1812, he was appointed by Governor Claiborne, Judge of the Supreme Court of the State of Louisiana, and shortly afterwards, by the resignation of Judge Hall, took the place of presiding judge. This station he filled till his decease on the 10th November, 1836, in the sixty-third year of his age.

Judge Mathews greatly attributed the formation of his character and his success in life to the high intelligence and excellent qualities of his mother, and the education and instruction he received from her—and how many distinguished men, among whom may be named Washington and Napoleon, have expressed the most tender gratitude for the influence and benefits of the maternal culture of their minds and formation of their character.

The prize for the best essay on morals, was lately well bestowed in France on the production of Martin, which treats of the education of women, or of the civilization of mankind by means of mothers of families. And let me assure my young friends, that if they wish to have intelligent and well educated children, they must give them intelligent and well educated mothers. And what a recompense it was, that, at the close of a long life, the son remembers with grati-

* Young Mathews had a great desire to follow the profession of medicine, but in this wish he was overruled by his father, whose discerning mind perceived that his son's character was better adapted to the profession of law. He always, however, had a great fondness for medical studies.

gratitude and tenderness the benefits and instruction he received from his mother. It is only to our children we can pay the debt we owe to our parents.

But if his mother was distinguished for the excellencies and proper qualities of a woman and a mother, his father was not less distinguished for his heroic virtues as a patriot, his lofty character and services as a citizen, and his sound judgment and excellent sense as a man.

We have seen that Colonel Mathews was engaged in the campaign against the Indians, which terminated in that battle, memorable in our frontier warfare, at the mouth of the Kenhawa, which entirely broke the power of the savage tribes, at the time that the subject of our discourse was born. Nor did his services end with this event. His valor and skill as a military man were duly appreciated by his fellow-citizens. He was placed at the head of a regiment of the Virginia line, in our revolutionary struggle with Great Britain, and largely did he share in the danger and glory of that mighty undertaking. It is told of him, in history, that he acted a distinguished part on the occasion of the battle of Germantown, when our great commander attacked the British army. The attack was made early in the morning—the battle ground consisted of fields intersected with fences and stone walls—there was a dense fog. When the order of attack was given, Colonel Mathews, at the head of his regiment, made a furious onset over ground entangled with fences, and forced the British lines. One part of the American army fell into some confusion, which prevented a complete victory, and an order to retreat was given.

Colonel Mathews either did not receive the order to retreat, or in the obscurity of the fog, and led on by the fury of his charge, advanced so far beyond the American line, as to get in the rear of the British army—and there he was left, cut off from his compatriots, when the American army retired. On this occasion he was taken prisoner.

He was equally distinguished for his civic virtues and services. Not long after he removed to Georgia, he was elected governor of that State, and received the praise of being one of the best governors

in the United States, from that most cynical of men, the celebrated John Randolph.

Governor Mathews afterwards removed to the neighborhood of Natchez, in the territory of Mississippi where he afterwards died at an advanced age.

From such ancestors was descended the late Judge Mathews—and if it be not altogether true, that virtues and vices are hereditary, yet from a mother possessing so many excellent qualities, and a father so distinguished for his civil and military virtues, a son could not fail to derive sentiments and a character which would stamp him as a useful citizen.

How strong is the incentive to virtue and honorable conduct, if we realized the effect of example on our children, and would entertain no sentiments, contract no habits, and commit no actions which we do not wish our children to imitate.

Another fact is important in the life of Judge Mathews. I have said that he continued his academical pursuits till the age of twenty-two, and was not admitted to the bar till he was twenty-five years of age. I cannot but think that maturity of mind and body, before embarking in the pursuits of life, has a great tendency in forming a sound mind and character, and in giving solidity to the judgment and understanding.

It is also to be observed, that Judge Mathews practised his profession for a very short time. He was appointed a judge at the age of thirty. In ancient France, men were educated to the office of magistrates—and perhaps this is the best means of making good judges. Men who have been long engaged in the practice of the profession, unless they possess unusual candor of mind, identify themselves too much with their clients, acquire the habit of regarding only one side of a question, and hence are apt to lose sight of the abstract principles of justice—more especially men of great ingenuity, who delight more in the exercise of that ingenuity than in the perception of justice. Too often such men, even on the bench, display their ingenuity in supporting one side of a question, or in answering the arguments urged on the opposite side, rather than in analysing and weighing the principles of law and justice which

ought to produce the decision. These false habits of mind are more easily avoided when the lawyer early becomes the judge.

There are some men who seem naturally fitted and destined by the constitution of their minds, for the station of judges. Men who possess great candor; in whom judgment is the predominating faculty; and to whom the pursuit and attainment of justice affords the highest mental gratification. Such appears to have been the character and constitution of mind of the late Judge Mathews.

A review of the peculiar difficulties of the station he was so early called to fill, and the manner in which he acquitted himself of its duties, will make this manifest. Appointed at the age of thirty to discharge the duties of a judge, according to a system of law with which he could have had no previous acquaintance, a knowledge of which was locked up in languages, to which a man, inland bred, as he was, must have been a stranger, and on which even books were scarce, his mind must have been frequently thrown back upon itself in the decisions he was called upon to make. Notwithstanding these difficulties, the very able bar which had emigrated to Louisiana, from the east and from the west, and from across the ocean, attest the uniform ability and correctness of his decisions, even in the early period of his magistracy. Let it be remembered, that he was appointed to preside over a people who were aliens to the government; who felt uneasy at being transferred to a new sovereignty without their consent, and were jealous of strangers: that he had to administer justice under laws of Spanish and French origin and colonial legislation, and yet he succeeded in obtaining the confidence, esteem and respect of all classes.

The period between the appointment of Judge Mathews and the adoption of the Constitution, and to the close of the war with England, must be an interesting one in the history of the feelings of the colonists of Louisiana; and, with this period of time, Judge Mathews was intimately connected, visiting every part of the state in his circuits, and presenting a scene new to the people among whom it was acted. No one but a person who was an actor can adequately describe it. My own arrival in the state was long subsequent to these events; and the gentleman who addressed you in French, and

who was a participator in the events of that period, has given you some account of it, and of the share of Judge Mathews in its occurrences.

My personal acquaintance with Judge Mathews commenced in the year 1822, when I found him presiding in the Supreme Court of the state. He was then in the vigor of his faculties, and in high physical health, and took upon him a full share of the business of the court. He possessed great quickness of mind, readily seizing upon the difficulties and disputed points of a case. He was patient in listening to whatever could be urged in the way of argument or illustration, but his mind was too clear to be led away by sophistry or ingenuity.

Judge Mathews was a great lover of justice; and if it was possible in any manner to reach the justice of a case without violating fixed principles of law, he would always do so. The nature of civil law jurisprudence requires of a judge to refer back to the principles of law applicable to the facts of the case, rather than rest the decision on precedents, or the authority of other decided cases; and this is surely the correct mode of administering justice where law is reduced to a science and its principles collected in elementary works; for, if the cases are analogous, the principles invoked in the previous case ought alone to be the reason for deciding the subsequent ones. As a celebrated chancellor of England, having one of his own decisions pressed upon him as authority, exclaimed, "Do not tell me how I decided—tell me why I so decided." This species of jurisprudence, therefore, admirably suited the mind of Judge Mathews, for the Civil Law is the very essence and source of equitable jurisprudence.

If, by learning, be meant an original intimate acquaintance with all the books in his profession, Judge Mathews, no more than his distinguished prototype, Judge Marshall, could be said to be a learned lawyer; but he possessed a perfect familiarity with elementary writers, and having embodied the principles of the science of law with his own perceptions, it was not difficult for him to work out and deduce the proper result by the operations of his own mind, on the materials it possessed; and an early familiarity with the Latin language, and with French and Spanish afterwards acquired,

enabled him, when his investigations called for their examination, to avail of the aid of the best writers in the original languages.

The minds and professional character of judges and lawyers, may be divided into two different classes. There is one class who know the profession of law as a result of memory; who store their minds with authorities, cases and dicta, and, when called to act in their profession, rely on books, cases and authorities, and are nothing without them. They know law as the student learned mathematics, by committing Euclid to memory, without being able to explain the principles on which any one proposition is demonstrated. Among this class of the profession may usually be ranked, those who have been deprived of an early regular education, or have taken up the profession late in life, and also, those who are naturally deficient in the organ of intellectual system and arrangement. With this class of persons, law is not a system, but an undigested mass of particulars, without arrangement, connection, or dependence.

There is another class who embody the principles of the science with their own perceptions, and mix them up with their elements of thought, and when called upon to give an opinion, their decisions are the results of the operations of their own minds.

With the first class, law is an effort of memory of what has been said, written, or decided by others; or, frequently, no more than a knowledge of the books which treat on the different subjects of the science: with the other class, law is an emanation of their own minds, and they speak as being authorities themselves.

Such was eminently the case with the late Chief Justice Marshall, whose decisions required no authorities to support them, and such also was the character of the judicial mind of the late Judge Mathews.

Neither judges nor courts are infallible, but the character of mind of judges as well as their knowledge, has much effect on the general soundness and correctness of the conclusions at which they arrive.

If we examine the decisions delivered by Judge Mathews, and which it must be considered were left principally to his own investigation, it will be found that the decision is almost without exception, in accordance with sound reason, with law and with justice.

In all the judgments delivered by him, the case is analysed with a view to exhibit the various relations of the rights of the parties, and

the decision is deduced like a mathematical proposition, from the relation which those rights and duties bear to each other. This decision was not delivered in a dry, hard and repulsive form—in which it was difficult to perceive the steps which led from the premises to the conclusion. It was deduced in a clear, methodical and lucid manner, which was easily followed, and ended in giving satisfaction to the understanding.

The composition of his decisions is neat and elegant—his language pure and correct—the sentences are well put together, and the style fluent, rising sometimes to a chastened eloquence, which is the only kind the decisions of a court admit of.

Judge Mathews possessed in an eminent degree that great essential requisite quality in a judge, firm and unbending integrity, which drew to him the public confidence. It is wonderful how much sound morality contributes to produce sound judgment and sound intellect. Whether in law, politics, legislation, or any other subject—the instinct, as some would call it, of an honest, uneducated and even ignorant man, will lead him to adopt right conclusions and opinions, whilst the intellect of the most educated and talented, when at all affected by interest or passion, will lead them astray on the plainest subjects. In this sense it is true that *vox populi, est vox Dei*. For although the people may be misled by passion and prejudice to commit rash actions, their ultimate opinions and conclusions are always right—for no personal interest warps and blinds their judgment and perceptions, as is too generally the case with those who assume to lead in life.

To a mind not corroded by the passions, or harrassed by cares and disquietudes, the business of judging is not difficult. The difficulty is to find the man well educated in his profession, not goaded by ambition or the lust of wealth, free from cares, and willing to devote himself to serve the public in this capacity—and such a man is the highest gift of the providence of God to a people. In all these respects, as well as in the possession of a naturally sound judgment and discriminating mind, Judge Mathews greatly excelled. He did not discover justice solely by the penetration of his mind, but also by a certain instinct, and his heart moved towards it as towards a beloved object. The passions which troubled others did not affect

him. Without ambition, he seemed wholly devoted to discharge the high functions of a minister of justice.

To these admirable qualities as a judge, was united the most amiable exterior. The spirit of domination not reigning within him, did not manifest itself in his deportment. His mildness, amiability and patience became the station of a judge, and sometimes a dryly humorous remark, relieved the heaviness of legal discussion.

The members of the bar, will never forget that venerable and patriarchal head and countenance on which were depicted benevolence, intelligence and goodness—that patient attention, aided by a quick perception of the real points of controversy which was given to every one who addressed him. Every advocate felt that he was appealing for justice not only to the living oracle of law, but to the impersonation of justice herself. In addition to these excellent qualities he presided with great dignity on the bench, and commanded the respect of all who approached him.*

Judge Mathews inherited but little property from his father, and his fortune, ample at the time of his decease, was the result of his economy and judicious management. He always lived in a retired manner, without any extravagance or ostentation, yet without denying himself any thing that his fortune enabled him to attain, or that his station required. Happy in his family, his whole life was accompanied by a prosperity of that moderate nature, which, without dazzling the mind, or corrupting the heart, diffuses a pure and tranquil feeling, which constitutes the happiness of the wise and the good. He was cheerful and lively in private life, and his conversation was tinged with a vein of humor which greatly enlivened his society.

Such was the man whom it pleased Providence to send to preside over Louisiana in her infant condition. and such was the man who is felt to be an irreparable loss to the State. I fear that amidst the distractions and dissipations of active life, we do not sufficiently consider how great and good a man is lost to us.

Let us pause, look around, and ask each other how many are there qualified to fill the important station lately occupied by Judge

* In his personal appearance Judge Mathews was of the middle stature, and constitutionally disposed to corpulence, which even much exercise could not repress. His countenance was always placid, with a lurking expression of humor, indicating playfulness of mind, and a disposition to repartee, and many excellent ones are told of him.

Mathews, so honorably to himself, so usefully to the public. How many are there in whose integrity, talents, honor and knowledge, the citizens of Louisiana will repose with the same confidence the high duties of administering justice in the last resort, as they felt in Judge Mathews. In whom will be found united the same capacity, soundness of judgment, talents, purity of character, amiability of disposition, simplicity of life and venerable aspect.

The duties of a judge are those of painful responsibility, even when supported by a consciousness of rendering great public service. It is his duty as a minister of justice, to look to the God of Justice for guidance, direction and assistance. It has been well said, *Judicare est orare*, that to judge is to pray, for there ought to rest upon the mind a solemn religious sense of duty, in meting out justice among our fellow men. It is an awful and responsible duty, and those who most feel its responsibility, least aspire to court its labors. Yes, fellow-citizens, the station and office of a Judge of the Supreme Court, of a court of last resort, is, in any country, an honorable, an important, and a difficult station. It is emphatically and peculiarly so in Louisiana. The Court is entrusted with a revision of the rights of parties, not only on all branches of the law, but also as to questions of fact, and in the complication and conflict of Spanish, French, English and American law, and by reason of the various legislative enactments, to modify and adapt them to our political and social institutions and feelings, much delicate responsibility, and great extent of power have devolved on the judiciary—and in that branch of the administration of the government, it was and is peculiarly necessary to have honorable, upright and inflexible men, in whose judgment, capacity, integrity and power of discrimination, his fellow-citizens should repose with implicit confidence. If the public do not repose with confidence in the integrity, ability, virtue and character of the judges, there will exist a restlessness, a vague apprehension of evil, an uncertainty and discontent, which poisons and embitters the enjoyment of life—more particularly with a people so sensible of and justly valuing their personal, political and social rights, as are the citizens of republican America.

It is this confidence and the consciousness of usefulness, and not the slender compensation, which rewards the judge and sustains him

under his load of labor and responsibility. How important then is a just discharge of the duties of this high station. How important that the persons who fill it should possess the public confidence. How transcendently honorable and praiseworthy must be the life and character of that man, who, on closing a career of thirty years in such a station, receives the unanimous approbation, commendation and regret of his fellow-citizens of all classes, ranks and parties, among a population composed of the descendants of the nations of France and Spain, and of emigrants from every state in the Union.

The regret felt on the tidings of the decease of the late Judge Mathews, manifested how fully his character and conduct received the general approbation—the approbation of all Louisiana. It was the regret of the fathers of the land for a brother—a man whom they had known from early youth—whose virtues and character were their study for the whole of a past age. It was the grief of the men of active life at the loss of a friend—of a counsellor of the state. It was the grief of those just entering life at the loss of a father—a guide and an example. It was the grief of the whole community at the loss of an honorable and upright magistrate.

Truly and eloquently is it expressed in the resolutions passed by the members of the bar, “That they deeply deplore the death of the Honorable George Mathews, late presiding judge of the Supreme Court of this state.

“That they consider, that in him society has lost a virtuous citizen, the state an able and upright judge, and the profession one of its brightest ornaments; and that the rectitude and ability with which, during a long series of years, the deceased has discharged the arduous duties of the most important and responsible station known to a republican government, entitle his memory to the respect and veneration of his countrymen.”

Upon this review of the life and character of Judge Mathews, I proceed to pass a judgment which will be confirmed by this assembly, and by all Louisiana,—that the name and reputation of Judge Mathews shall pass down with the early history of the state, as of one beloved for his virtues as a man, honored for his services as a citizen, and distinguished and revered for his talents, integrity, judgment and usefulness as a magistrate. That he possessed the

unbounded respect, esteem, confidence and veneration of Louisiana, during his life, and the heartfelt regret and grief of his fellow-citizens were testified at his death.

May this feeble portrait and testimony to his life and character, serve as an incentive to us and our children to love, respect and revere the name of Judge Mathews, and, above all, to imitate his virtues. That although all cannot attain to the same degree of distinction and usefulness, yet every one may possess the conscious satisfaction of having in his day and generation, and to the extent of his talents and opportunities, deserved well of the Republic.*

* Judge Mathews was twice married; first to Sarah Carpenter, of the Territory of Mississippi, in 1808, of which marriage only one child survived, now the wife of Captain William H. Chace, of the United States Engineers; and a second time to Harriet Flower, of which marriage only one child, a boy of twelve years of age, survived. A few days before the decease of Judge Mathews, this youth received the contents of his own gun in his right arm by imprudently thrusting the butt of the gun into the bushes to frighten out the game. It was at first apprehended he would lose the arm, but this misfortune was avoided. This accident never came to the knowledge of his father.

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